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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOM MCMILLIN, an individual;
Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,
Defendants.

Case No.:

COMPLAINT

1. Statutory Violations of Freedom of Information Act per 5 U.S.C. § 552; and
2. Statutory Violations of Privacy Act per 5 U.S.C. § 552a.

INTRODUCTION

1. The purpose of this action is to compel production of materials from an agency of the United States that has unlawfully withheld the materials from the requester.

2. This action follows Plaintiff's approximately fourteen-year saga seeking his own information.

PARTIES

3. Plaintiff Tom McMillin ("Mr. McMillin" or "Plaintiff") is a natural person. He is the owner, sole member, and CEO of Bay Cities Patrol, which is a licensed private patrol operator in the San Francisco Bay Area. Plaintiff is a resident of this State and San Mateo County.

4. Defendant United States Department of Justice is a law enforcement agency of the United States that holds and has withheld the information sought by Plaintiff.

SUBJECT MATTER JURSDICTION

5. This Court has jurisdiction per 28 U.S.C. § 1331 over this action under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B), and the Privacy Act, 5 U.S.C. § 552a(g)(1).

PERSONAL JURISDICTION

6. This Court has personal jurisdiction over all Defendants, who are present in this District as representatives and agents of the U.S. Government.

VENUE AND DIVISION

7. The Northern District of California is a proper venue pursuant to 28 U.S.C. § 1391(b)(2) and 5 U.S.C. § 552(a)(4)(B) because Plaintiff resides here and a substantial amount of the underlying events occurred here. In addition, the lead/primary Defendant is found here.

FACTS

3
COMPLAINT

1 from the local Chief of Police stating that the officers' reporting was grossly inaccurate and not
2 factual, and apologizing; therefore, the D.A. had no factual or legal basis to file the case.
3 Additionally, once Plaintiff returned to court with the two letters, the judge in the case ordered
4 that the plea be rescinded, that a "not guilty" plea entered, and that the case be dismissed.
5

6 10. Plaintiff has maintained his private patrol license continuously despite his plea,
7 and the state agency responsible for licensing of private patrol operators did not take any
8 substantive action on Plaintiff's license, likely due to his quick thinking and appropriate
9 response to what could have been a gang-related incident.
10

11 11. In any case, Plaintiff felt that he was mistreated by the local police, and he filed a
12 civil rights complaint with the FBI, which is a component of the Department of Justice, in 2009.
13 Plaintiff's civil rights complaint was investigated, and ended up being closed out without further
14 action in 2010. Plaintiff, dissatisfied with the lack of remedies for what he believed to be
15 abuses of power and violations of his civil rights, filed a Freedom of Information Act (FOIA)
16 request with the FBI in August 2010. The actual original request has been misplaced due to the
17 passage of time over 14 years because Plaintiff is not a sophisticated or professional litigant,
18 and did not think he specifically had to retain the request. Essentially, Plaintiff requested all
19 information on himself from the FBI that is contained in several files arising out of his civil
20 rights complaint. The following is a non-exhaustive list of FBI file numbers believed to contain
21 the requested information, although the redactions in what was ultimately produced to Plaintiff
22 greatly impair his ability to reconstruct the information, the file structure within the FBI files,
23 and other parameters of his inquiry:
24
25

26 (a) 282B-SF-145777

27 (b) 282B-SF-145935
28

(c) 282B-SF-146290

12. Plaintiff's Freedom of Information Act request stems from his effort to determine what local law enforcement and other witnesses told the FBI so that Plaintiff can evaluate whether he was treated fairly and whether the statements made to the FBI were accurate.

13. In this case, the FBI expressly told Plaintiff to check back in *ten years*. Plaintiff waited patiently *for the full ten years*. The order of events is essentially as follows:

14. On August 26, 2010, Plaintiff filed a FOIA request with the FBI legal department essentially seeking all information contained in the FBI files indicated above.

15. On December 17, 2010, the FBI wrote to Plaintiff stating that it had located 527 pages responsive to the request, but that Plaintiff "may wish to consider" reducing the scope of the request in order to fit into the "small queue" of 500 pages or less, which had the fastest processing time. Plaintiff declined to reduce the scope of his request, leaving him in the "medium queue" of 501 pages to 2,500 pages, with an indeterminate processing time. The request ended up taking nearly *ten years*.

16. Over the following ten years, the FBI and Plaintiff exchanged various letters discussing the request, culminating in a letter from the FBI on October 13, 2021 stating that it had located approximately 554 pages of documents; 1 hour, 8 minutes of video; and 18 minutes of audio potentially related to McMillin's request. The letter additionally stated, incorrectly, that McMillin had agreed to limit the scope of his request to eliminate the audio-visual portion of the request to accelerate processing. The FBI's resulting production therefore covered 554 pages and no audio/video materials. The FBI had stated to Plaintiff that if he insisted on the audio/video evidence, it would take another *five years*, or *three years* with just the printed

1 material. Plaintiff's intention was *deferring* the audio/video evidence so as to obtain production
2 of the documents first, and then wait for the audio and video—not to waive entirely the
3 production of audio and video, as later claimed by the FBI.

4
5 17. In any case, on February 28, 2023, the FBI sent a letter to McMillin confirming
6 that it had reviewed 549 pages of documents and was releasing 324 pages. The released 324
7 pages are subject to heavy redactions, plus claims of exemptions from disclosure pursuant to 5
8 USC 552(b)(5), (b)(6), (b)(7)(C)-(E), and Section 552a(j)(2). The redactions even include
9 Special Agents' names, which are not confidential and which would have allowed Plaintiff to
10 reconstruct who conducted the interviews of witnesses or otherwise touched his file. The files
11 were also only partially produced, with a simple list of page numbers that were withheld,
12 rendering it impossible to determine the nature of the information contained within the 225
13 pages withheld from Plaintiff. A copy of the withheld page index is attached to the produced
14 documents showing that there is merely a citation to the FOIA exemptions that the FBI
15 contends apply; there is no indication of *why* the FOIA exemption is believed to apply to *any*
16 withheld page.
17

18
19 18. After receiving this redacted production with 225 potentially responsive pages
20 withheld, McMillin submitted an administrative appeal to the FBI to obtain the withheld and
21 redacted information.
22

23 19. On May 6, 2023, the FBI submitted a letter to McMillin indicated it received
24 McMillin's appeal and was working on it.

25 20. On May 7, 2024, McMillin received an email from the DOJ's Office of
26 Information Policy (OIP) confirming that that office was processing his appeal and that the
27 Office estimated his completion date as June 3, 2024.
28

1 21. On June 3, 2024, McMillin received a final response from the DOJ's Office of
2 Information Policy explaining that it was denying McMillin's appeal in-part and "remanding"
3 in-part to the FBI for further review and processing. The OIP's response explained that if
4 McMillin was dissatisfied with the OIP's determination, he could file a lawsuit per 5 USC §
5 552(a)(4)(B). The FBI subsequently confirmed that it would not be producing additional
6 information, in another letter sent to Plaintiff. Plaintiff has waited long enough for the
7 information and will decline to play this game with the FBI any longer.

8
9 22. This action followed.

10
11 **FIRST CAUSE OF ACTION – FREEDOM OF INFORMATION ACT**

12 **5 U.S.C. § 552(a)(4)(B)**

13 23. Plaintiff incorporates the foregoing by reference.

14 24. The FBI is a component of Defendant United States Department of Justice.

15 25. The FBI maintains records on Plaintiff that are within the scope of the Freedom
16 of Information Act.

17
18 26. Plaintiff requested the records.

19 27. The FBI did not comply with the request, instead producing a partial file that was
20 heavily redacted, and withholding over 200 (or more) pages without even generally describing
21 them. The withheld page index as produced by the FBI is attached hereto as **Exhibit 1**.

22 28. Plaintiff appealed administratively within the FBI, and to the Department of
23 Justice. Plaintiff's appeal was denied in-part and remanded in-part, and the remanded request
24 was also effectively denied by the FBI.

25
26 29. Plaintiff has exhausted his administrative remedies, as shown in the final
27 determination letter attached as **Exhibit 2** inviting Plaintiff to proceed in District Court.
28

1 30. The redactions and withholding by the FBI do not comply with the Freedom of
2 Information Act because information has been withheld under exemptions that do not apply
3 and/or the records requested are not within the scope of those exemptions.
4

5 31. Wherefore, Plaintiff seeks an order for production of the requested materials
6 without redactions, plus attorney fees.

7 **SECOND CAUSE OF ACTION – PRIVACY ACT**

8 **5 U.S.C. § 552a**

9 32. Plaintiff incorporates the foregoing by reference.
10

11 33. The records held by the FBI pertain to Plaintiff, who is a natural person.

12 34. The FBI unlawfully refused to produce the records that it has on Plaintiff, who
13 sought to copy them under 5 U.S.C. § 552a(d)(1) so that he could determine whether an
14 amendment would be appropriate under 552a(d)(2). As the FBI refused to produce the
15 information, Plaintiff has no ability to evaluate whether to even attempt to amend the FBI's
16 records on him.
17

18 35. Wherefore, Plaintiff seeks an order for production of the requested materials
19 without redactions, plus attorney fees.

20 **PRAYER**

- 21 1. Production of all of the withheld materials, without redactions.
22 2. Removing redactions from the produced materials.
23 3. Attorney fees and costs pursuant to the Freedom of Information
24 Act/Privacy Act.
25 4. Any other further relief that is required in the interests of justice.
26
27
28

Dated: July 29, 2024

Andrew G. Watters

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